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OFFICER KRIS RICHARDSON, and OFFICER JOHN OLNEY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 J. ROBERT KILLIAN,)
13 Plaintiff,)
14 vs.)
15)
16 CITY OF MONTEREY, TIM SHELBY)
in his official capacity as Chief of Police)
for the CITY OF MONTEREY,)
OFFICER KRIS RICHARDSON)
individually and in his official capacity)
as Police Officer for the CITY OF)
MONTEREY, OFFICER JOHN OLNEY)
individually and in his official capacity)
as Police Officer for the CITY OF)
MONTEREY, and DOES 1-25,)
INCLUSIVE.
17)
18)
19)
20)
Case No. C12-5418-PSG
DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PORTIONS OF PLAINTIFF'S
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF
Date: January 8, 2013
Time: 10:00 a.m.
Magistrate Judge Paul S. Grewal
Courtroom 5, Fourth Floor

Defendants.

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on January 8, 2013 at 10:00 a.m., or as soon thereafter as
25 the matter may be heard in the above-titled court, located at 280 South First Street, San Jose,
26 California, Defendants CITY OF MONTEREY, TIM SHELBY, KRIS RICHARDSON, and
27 JOHN OLNEY will move to dismiss portions of Plaintiff's complaint pursuant to Federal Rule
28 of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted: (1)

1 claim for violation of rights pursuant to 42 U.S.C. § 12132 as pleaded in the third cause of
2 action. The City of Monterey will also move to dismiss Plaintiff's prayer for punitive damages
3 on page 9, line 5, number (3) of the complaint as pleaded against the City for failure to state a
4 claim upon which relief can be granted because the law bars such claims for punitive damages
5 against public entities. 42 U.S.C. § 1983; 42 U.S.C. § 12132; Fed. R. Civ. P. 12(b)(6).

6 This motion will be based on this notice of motion and motion, the memorandum of
7 points and authorities filed herewith, and all other pleadings and papers also filed herein.

8 Dated: November 28, 2012

9
10 LAW OFFICES OF VINCENT P. HURLEY
11 A Professional Corporation

12 By: /s/ J. Omar Rodriguez
13 J. OMAR RODRIGUEZ
14 Attorneys for Defendants CITY OF MONTEREY,
15 TIM SHELBY, OFFICER KRIS RICHARDSON,
16 and OFFICER JOHN OLNEY

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MEMORANDUM OF POINTS AND AUTHORITIES

The CITY OF MONTEREY, TIM SHELBY, KRIS RICHARDSON, and JOHN OLNEY file this memorandum of points and authorities in support of its motion to dismiss the complaint of Plaintiff J. ROBERT KILLIAN.

I.

STATEMENT OF THE CASE

7 Plaintiff J. Robert Killian filed this action on October 19, 2012 in the United States
8 District Court, Northern District of California. The action was filed against the City of
9 Monterey, Chief of Police Tim Shelby of Monterey Police Department, Officer Kris Richardson
10 of the Monterey Police Department, Officer John Olney of the Monterey Police Department, and
11 Does 1-25. The complaint alleges federal claims pursuant to 42 U.S.C. §§ 1983 and 12132.
12 Defendant City of Monterey was served November 7, 2012.

Defendants City of Monterey, Chief of Police Tim Shelby, Officer Kris Richardson, and
Officer John Olney now make this timely motion to dismiss.

III.

STATEMENT OF FACTS

17 Plaintiff alleges that on February 4, 2011, Plaintiff was detained and arrested by Officers
18 Richardson and Olney in Monterey, California. **Compl. 2:26-28.** Plaintiff alleges that he was
19 disabled on the incident date. **Compl. 2:26-28.** Plaintiff alleges that Officer Richardson
20 required that Plaintiff perform field sobriety tests. **Compl. 3:22-25.** Plaintiff alleges Officer
21 Richardson then threw Plaintiff into the back of the patrol vehicle and charged Plaintiff with
22 driving under the influence, even though Plaintiff was not. **Compl. 4:1-4.** Plaintiff alleges that
23 Officers Richardson and Olney harassed, detained, and arrested Plaintiff because of Plaintiff's
24 disability. **Compl. 4:19-21.** Plaintiff further alleges that the actions of Officers Richardson and
25 Olney were representative of a custom, policy or repeated practice of condoning and encouraging
26 the abuse of police authority. **Compl. 6:4-25.** Finally, Plaintiff alleges that the City of Monterey
27 and Chief Shelby failed to train, supervise and/or discipline Officers Richardson and Olney in
28 recognizing symptoms of disability. **Compl. 8:1-11.**

1 Plaintiffs have prayed for general damages, special damages, punitive damages, attorneys
 2 fees, and costs of suit. **Compl. 9-1-8.**

3 **III.**

4 **LEGAL ARGUMENT**

5 **A. Statement of the Law.**

6 Federal Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss a claim on the
 7 basis of a dispositive issue of law. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989) *citing*
 8 *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). If, as a matter of law, it is clear that no
 9 relief could be granted under any set of facts that could be proved consistent with the allegations,
 10 a claim must be dismissed. *Id.* *See Jones v. Bock*, 549 U.S. 199, 215 (2007) *citing Levento v.*
 11 *Lapina*, 258 F.3d 156, 161 (2001) (“[A] complaint may be subject to dismissal under Rule
 12 12(b)(6) when an affirmative defense ... appears on its face”). This procedure serves to
 13 streamline litigation by dispensing with needless discovery and fact-finding. *Neitzke v. William*,
 14 *supra* at 326-327. A motion pursuant to Rule 12(b)(6) is the proper vehicle for a defendant to
 15 challenge damages precluded by law. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974
 16 (9th Cir. 2010).

17 **B. Plaintiff’s Third Cause of Action Fails to State a Claim for Relief Pursuant to**
 18 **42 U.S.C. § 12132 Against the Individually Named Defendants.**

19 Plaintiff’s third claim is that the arrest and detention of Plaintiff violated the Americans
 20 with Disabilities Act. The claim fails as to the individually named Defendants. Title II of the
 21 ADA, 42 U.S.C. § 12132, prohibits a public entity from discriminating against a qualified
 22 individual on the basis of disability. *Weinreich v. L.A. County Metro. Transp. Auth.*, 114 F.3d
 23 976, 978 (9th Cir.1997). Individuals are not subject to suit pursuant to 42 U.S.C. § 12132.
 24 *Lum v. County of San Joaquin*, 756 F.Supp.2d 1243, 1253 (2010). The individually named
 25 Defendants are not public entities. Therefore, Plaintiff’s third cause of action pursuant to
 26 42 U.S.C. § 12132 against the individually named Defendants should be dismissed.

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1 **C. Plaintiffs' Prayer for Punitive Damages is Barred Against the City of**
 2 **Monterey Since it is a Public Entity, and Should Therefore be Dismissed as to the City of**
 3 **Monterey.**

4 Plaintiffs' prayer for punitive damages on page 9, line 5, number (3) is statutorily barred
 5 against the City of Monterey. A municipality is immune from punitive damages under 42 U.S.C.
 6 § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Furthermore,
 7 punitive damages may not be awarded under section 202 of the ADA. *Barnes v. Gorman*, 536
 8 U.S. 181, 189 (2002). Therefore, as a matter of law, the City of Monterey is not liable for
 9 punitive damages, and Plaintiff's prayer should be dismissed as to City of Monterey.

10 **IV.**

11 **CONCLUSION**

12 For the reasons stated above, the City of Monterey, Tim Shelby, Kris Richardson, and John
 13 Olney respectfully request that the Court grant their motion to dismiss the above-referenced
 14 claims and the Plaintiffs' prayer for punitive damages.

16 Dated: November 28, 2012

17 LAW OFFICES OF VINCENT P. HURLEY
 18 A Professional Corporation

20 By: _____ /s/ J. Omar Rodriguez

21 J. OMAR RODRIGUEZ

22 Attorneys for Defendants CITY OF MONTEREY,
 23 TIM SHELBY, OFFICER KRIS RICHARDSON,
 24 and OFFICER JOHN OLNEY